[APPELLATE CRIMINAL JURISDICTION]

PEDLOW, J.

August 25, 1939.

## GOH TENG LOK v. REX.

[MALACCA MAGISTRATE'S APPEAL No. 14 of 1939]

*Criminal Procedure—Taking further evidence.*

If a Magistrate in his grounds of judgment does not make it clear whether he did or he did not believe the story of the complainant the Judge is entitled to ask him the question to be answered by affidavit "Did you or did you not believe the story of the complainant?"

MAGISTRATE'S APPEAL.

*D. N. Bannerjea* for appellant.

*E. N. Griffith-Jones,* Crown Counsel for the Crown.

The facts and arguments appear sufficiently from the oral judgment delivered by

**Pedlow, J.**—(After discussing facts) said:—

I say at once (as you probably already know) that this further affidavit by the learned Magistrate was placed on record at my request.

When I came to Malacca and was given this appeal I instructed the Registrar to write to the Magistrate and ask him to answer one question by affidavit and to serve the affidavit on the appellant, and that question was:—

'Did you or did you not believe the story of the complainant?"

It has been submitted that it is not possible to do that. I do not agree. What has been submitted about *Nagalingam's case* unreported has no bearing at all on the present case.

*Nagalingam's case* was a question of appeal to the Court of Criminal Appeal. That is an entirely different matter from an appeal from a Magistrate.

An appeal from a Magistrate lies without reservation. The only condition is that the appellant must be dissatisfied.

Appeals to the Court of Criminal Appeal are governed by entirely different considerations.

It is submitted that there was no finding of fact by the learned trial Magistrate. There again I do not agree. The mere fact of a conviction must, in my opinion, be taken to mean that the magistrate believed the complainant, but it was to set that matter at rest that I asked for a specific statement by the magistrate on the point.

I took this step in advance because a Judge is only available in Malacca, and a Crown Counsel is only available here, during a certain time, and if the matter were left until it came up in Court and then the Judge referred it to the Magistrate for this information, it might mean that the accused would have to have his appeal postponed to the next Assizes, and in the meantime he might have to stay in prison. It was to prevent anything of that nature that I took this action in advance. I think that action was fully justified.

In any case, if this affidavit had not been filed it is difficult to see how a Judge could hold that by a conviction a Magistrate meant anything other than that he believed the complainant's story. One must assume that he has some knowledge of the principles of English Criminal Law.

There are no discrepancies in the present evidence which would justify me in holding that the Magistrate came to a wrong conclusion on the facts before him.

The appeal is dismissed and the conviction and sentence confirmed.

*Appeal dismissed.*

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.